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INC. and N.M.N. CONSTRUCTION, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LARGO CONCRETE, INC., a California
Corporation; N.M.N. CONSTRUCTION, INC., a
California Corporation.

Plaintiffs,

v.

LIBERTY MUTUAL FIRE INSURANCE
COMPANY, a Massachusetts Corporation, and
DOES 1 through 100, inclusive.

Defendants.

AND RELATED COUNTERCLAIM

Case No. C07-04651 CRB (ADR)
The Hon. Charles R. Breyer

**DECLARATION OF CRAIG S. PYNES IN
OPPOSITION TO LIBERTY MUTUAL'S
MOTION TO DISQUALIFY
ROXBOROUGH, POMERANCE & NYE
FROM REPRESENTING PLAINTIFFS**

Date: December 21, 2007
Time: 10:00 a.m.
Ctmm: 8

[Memorandum of Points and Authorities;
Objections To Evidence Submitted In Support Of
Liberty Mutual's Motion To Disqualify and
Supporting Declarations Filed and Served
Concurrently Herewith]

Complaint filed: September 10, 2007

I, CRAIG S. PYNES, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am an associate with the law firm Roxborough, Pomerance & Nye LLP ("RP&N"), and have been since March, 2004. I have personal knowledge of the facts set forth below and, if called and sworn as a witness, could and would testify competently thereto.

1 2. I have been a practicing attorney for 17 years. At one point in my legal career I worked
2 at the law offices of Kern & Wooley from July 2003 to March 2004.

3 3. During my brief tenure at Kern & Wooley, I worked primarily on matters that involved
4 litigation or coverage determinations under first-party commercial general liability policies and
5 property policies. I did not personally handle any workers' compensation bad faith claim handling
6 actions for Liberty Mutual Fire Insurance Company or any other client of Kern & Wooley prior to
7 working for Kern & Wooley. I also had not been involved in any workers' compensation bad faith
8 lawsuit prior to Kern & Wooley.

9 4. All of the cases I handled at Kern & Wooley involving any sort of coverage or insurance
10 bad faith litigation concerning coverage related only to lines of insurance that were completely
11 unrelated to workers' compensation. Instead, I handled commercial general liability, first party
12 property, earthquake coverage, contribution actions among insurers and other similar areas. Again,
13 none of this involved or related to workers' compensation bad faith litigation. Everything I learned
14 about workers' compensation bad faith litigation, I learned from my current employer RP&N.

15 5. My only extremely limited connection with workers' compensation bad faith while at
16 Kern & Wooley was assisting another attorney, Melodie Yee, with reviewing 3 or 4 workers'
17 compensation claim files. My assignment was really that of a paralegal, i.e. solely to redact personal
18 identifying information of the injured workers, such as their social security numbers and telephone
19 numbers. This was in relation to a matter captioned *Tony's Fine Foods v. Liberty Mutual Insurance*
20 *Company*. The claim files I reviewed contained no confidential information regarding Liberty Mutual
21 Insurance Company or Liberty Mutual Fire Insurance Company and were individually titled
22 "applicant's name versus Tony's Fine Foods". I spent less than 4 hours performing this task. During
23 the course of this task I prepared a short log of the claimants' personal information that was redacted.
24 The log was less than 1 page of personal information.

25 6. Throughout my employment with RP&N, I have been instructed to prepare detailed
26 billing entries for all work I perform and I have done so. My practice was the same while employed at
27 Kern & Wooley. Any work I performed on any Kern & Wooley matter, including the Tony's Fine

1 Food's matter, I always filled out time sheets and billed my time to the file. Accordingly, whatever
2 work I did on the *Tony's Fine Food's* matter would have been reflected on my billing entries.

3 7 I was never aware that Lisa Kralik Hansen was involved in the *Tony's Fine Foods*
4 matter and I never discussed or met with her on that case.

5 8. I never prepared or viewed any pleadings, discovery, emails, or other correspondence in
6 the *Tony's Fine Foods v. Liberty Mutual Insurance Company* matter. The only document I prepared in
7 that matter was a less than 1 page log of the injured worker's personal information. I prepared this log
8 based on a less than 5 minute meeting I had in Ms. Yee's office where I was light and needed work.
9 She gave me 3 to 4 workers' compensation claim files and asked me to redact personal information
10 concerning the injured workers who had filed claims against Tony's Fine Food's for workers'
11 compensation benefits. I recall completing that basic task shortly after meeting with Ms. Yee.
12 Regarding the log, I don't recall what I did with it. However, my general business practice at Kern &
13 Wooley was to either leave my work with a note on the person's desk who asked me to do the
14 assignment, in this case, Ms. Yee's desk, or hand the document to the person (Ms. Yee). Since I only
15 recall the one brief meeting with Ms. Yee, I believe I probably left the log on Ms. Yee's desk.
16 Regardless, 3 to 4 hours is all the work I did on Tony's Fine Food's. I had no other discussions, oral or
17 written, with anyone at Kern & Wooley on Tony's Fine Food's other than the less than 5 minute
18 meeting with Ms. Yee.

19 9. I never participated in any case strategy discussions with anyone at Kern & Wooley or
20 participated in any mediation regarding the *Tony's Fine Foods v. Liberty Mutual Insurance Company*
21 matter, or any other workers' compensation bad faith claims mishandling case at Kern & Wooley.

22 10. I never learned, or discussed with anyone at Kern & Wooley, the factual or legal
23 background of the *Tony's Fine Foods v. Liberty Mutual Insurance Company* matter.

24 11. I never spoke with anyone at any Liberty entity regarding the *Tony's Fine Foods v.*
25 *Liberty Mutual Insurance Company* matter or any other matter that involved workers' compensation
26 insurance issues in any way while at Kern & Wooley.

12. I have no idea where any of the *Tony's Fine Foods v. Liberty Mutual Insurance Company* files were stored or located at Kern & Wooley. At no time did I maintain or review any materials regarding this matter in my office, other than the 3-4 Tony's Fine Foods employee claim files.

13. I never received any training from anyone concerning Liberty Mutual Fire Insurance Company's, or any other Liberty entity's, workers' compensation bad faith claims handling practices during the eight months I was at Kern & Wooley.

14. I never reviewed, if they ever existed, any of Liberty Mutual Fire Insurance Company's, or any other Liberty entity's, claim manuals, practice and procedures, strategies for handling litigation, claims operation, general claim file management and record keeping documents, or any documents related thereto concerning workers' compensation insurance or workers' compensation bad faith litigation cases while I was at Kern & Wooley.

15. I did not have any discussions with any Liberty Mutual Fire Insurance Company, or any other Liberty entity's personnel regarding their workers' compensation operation, or defense on workers' compensation bad faith law suits including adjusters, case managers, underwriters, sales personnel, home office personnel, or any other personnel while at Kern & Wooley.

16. At no time during my employment with Kern & Wooley did I ever seek or gain access to information that was confidential to Liberty Mutual Fire Insurance Company's, or any other Liberty entity, regarding their policies or strategies associated with workers' compensation bad faith claims mishandling matters. In fact, I don't even know if they existed or what they were.

17. At no time during my employment with Kern & Wooley did I obtain any information that was confidential to Liberty Mutual Fire Insurance Company's, or any other Liberty entity, regarding their policies or strategies associated with workers' compensation bad faith claims mishandling litigation.

18. At no time during my employment with Kern & Wooley was I exposed to the pertinent facts, legal issues, or legal strategies of any workers' compensation bad faith claim handling actions

1 that involved Liberty Mutual Fire Insurance Company's, any other Liberty entity, or any other client of
2 Kern & Wooley.

3 19. I received no training and knew nothing about the workers' compensation bad faith
4 claims handling area of law prior to or during the time that I was employed with Kern & Wooley. I had
5 no experience at all in litigating such matters.

6 20. However, when I began my employment at Roxborough, Pomerance, & Nye, I received
7 extensive training on workers' compensation bad faith claims mishandling litigation personally from
8 Nicholas Roxborough and Drew Pomerance, which was supplemented with informal training over the
9 next couple of months from them and another partner with the firm, Michael Adreani. This was the
10 first time I was exposed to this unique area of law. I recall that, just before I arrived at RP&N, Mr.
11 Roxborough had provided me with a very large binder of bad faith materials. This included all of the
12 key legal precedential cases that pertained to the area of workers' compensation bad faith litigation. I
13 was asked to read all of these precedential cases and to become familiar with these cases. This was the
14 first time I ever read or heard about any of these precedential cases including Courtesy Ambulance,
15 Security Officer Services, Notrica 32nd Street Market and Tricor. Contained in this binder were also
16 key definitions of workers' compensation terms, terms which I had absolutely no familiarity with up
17 until the time I worked for RP&N. In this binder were other documents that I was completely
18 unfamiliar with such as experience rating forms, unit-statistical filings, key labor code sections and
19 similar documents related solely to the area of workers' compensation insurance. It took me
20 approximately 6 to 9 months to become basically familiar with all of these technical areas of the law,
21 terminology and documents. For the first two years I worked mostly with Mr. Roxborough on many
22 different workers' compensation bad faith litigation cases, he trained me on workers compensation
23 adjustor depositions, what motions were important, and most of all, he provided me with an amazing
24 amount of strategical thoughts and concepts that I had never learned from anyone before, either at Kern
25 & Wooley or with any of my prior employers. After a couple of years of working almost exclusively
26 on workers' compensation bad faith litigation matters for the partners of RP&N, in which instance all
27 of the cases had favorably settled, I was able to participate in an 11 day intense three panel arbitration

1 involving a major carrier. I, along with Mr. Adreani and Mr. Roxborough teamed up to obtain a very
2 favorable decision in that case.

3 21. Before leaving Kern & Wooley, I personally discussed my offer to work for
4 Roxborough, Pomerance & Nye with Lisa Kralik Hansen. We specifically discussed that the
5 Roxborough, Pomerance & Nye firm handles workers' compensation bad faith claims cases distinct
6 from the type of work I had done at Kern & Wooley. She agreed that this was a completely new area
7 of practice for me and a wonderful opportunity for me to learn a completely different area of the legal
8 practice. Ms. Hansen never expressed any concern that my employment with Roxborough, Pomerance
9 & Nye would pose any sort of conflict of interest with Liberty Mutual Fire Insurance Companys, any
10 other Liberty entity, or any other client of Kern & Wooley.

11 22. I did not take any documents or other materials regarding Liberty Mutual Fire Insurance
12 Company, any other Liberty entity, or any other Kern & Wooley client, with me when I ended my
13 employment with that firm.

14 23. At no time during my interview process with Roxborough, Pomerance, & Nye did we
15 discuss that Kern & Wooley represented Liberty entities on various occasions.

16 24. At no time during my employment with Roxborough, Pomerance & Nye have I worked
17 on any case involving Liberty Mutual Fire Insurance Company or any other Liberty entity. I have had
18 no conversations with anyone at Roxborough, Pomerance & Nye regarding any Liberty entity nor have
19 I seen any documents or materials regarding any Liberty entity. The only exception was approximately
20 in May 2006, in the *Republic Services v. Liberty Mutual Insurance Company* action, a case that had
21 been pending for quite some time in the state of Kentucky. My understanding was that a trial date had
22 been pending, there was a discovery cut off and Kentucky counsel and Republic Services had brought
23 in the RP&N firm for their expertise in workers' compensation bad faith litigation. Multiple
24 depositions had been scheduled in May of 2006, in California. I took two depositions in Sacramento
25 while Mr. Adreani took the other two depositions in Sacramento and Mr. Roxborough took another two
26 depositions in Los Angeles. By that time, I had taken at least ten workers' compensation adjustor
27 depositions under the supervision and guidance by the partners of RP&N. By then, I had become fairly

1 familiar with the areas of workers' compensation law and the Labor Code. Kentucky counsel had
2 propounded all of the discovery and, for the first time, I recall seeing the document called Best
3 Practice's Guidelines. At no time in Kern & Wooley did I ever see a copy of that document or any
4 document by that name or which contained Best Practices information. However, by that time, I had
5 seen other similar Best Practice Guidelines from other carriers and third party administrators. My
6 recollection is that there was not anything very significantly different from the approximate six page
7 document that I had seen in other cases. I had also seen Standard Best Practices that were a matter of
8 public record. These all talk typically about exactly the areas that I was trained on in terms of workers'
9 compensation bad faith litigation namely: The duties of a carrier to defend and timely investigate
10 claims, set reasonable and accurate reserves, pay temporary disability, obtain medical information,
11 conduct sabrosa investigations, and so on. I did not learn any of this at Kern & Wooley. All of this I
12 had learned in my two years prior to working on the Kentucky action while employed at RP&N. I also
13 never saw in the Kentucky action, a workers' compensation manual or any manual regarding any
14 Liberty entity.

15 25. Other work I recall conducting in the Kentucky action involved preparing and opposing
16 dispositive motions. RP&N had developed certain theory's involving motions in limine that needed to
17 be filed and I, while at RP&N also had seen motions in limine that had previously been opposed. The
18 legal work I did in assisting Kentucky counsel simply involved me applying everything that I had
19 learned while at RP&N in these areas. Whatever evidence I reviewed in the Kentucky action was
20 evidence that Kentucky counsel had obtained from defendants in that matter.

21 26. On December 11, 2006 I received a memo from Nicholas Roxborough that directed me
22 to have no involvement with any Liberty or Liberty related cases. A true and correct copy of that
23 memo is attached hereto as Exhibit "A".

24 27. Consistent with what I have testified to in ¶'s 23 and 24, I have had no involvement
25 with, reviewed any documents regarding, or discussed any facts regarding any matter that involved
26 Liberty Mutual Fire Insurance Company, or any other Liberty entity since receiving the December 11,
27 2006 memo.

1 I declare under perjury, pursuant to the laws of the United States of America, that the
2 foregoing is true and correct.

3 Executed this 30th day of November, 2007 at Woodland Hills, California.

4
5 
6 CRAIG S. PYNES

EXHIBIT

A

I N T E R

O F F I C E

MEMO

To: CSP
From: NPR
Subject: Republic Services
Date: December 11, 2006

cc: Partners, File

The partners recently met in light of the Kentucky decision and have decided that as we did with Karen Gichtin, we are following the same policy of putting a wall around you concerning any future Liberty cases in the office.

Craig, please note that this is not a reflection on anything you have done. In fact, the partners intellectually and otherwise, firmly believe that the Kentucky Judge is just flat out wrong. Legally, the cases he cited bore no reasonable relationship to the four hours of work you apparently did on a Liberty workers' comp case which seems to have involved only redacting the names and social security numbers of claimants. You've never shared anything whatsoever with us in terms of your short period of time at the Kern & Wooley law firm concerning Liberty, or for that matter, any of their other clients.

Our clients' have had an extremely unfortunate relationship with Liberty who seem to always use a scorched earth tactic when Liberty's policyholders question Liberty's conduct. Mike and I have known about this long before you ever joined the firm. Nevertheless, we wanted to make sure that you understood that we feel we have no choice but to make sure you are not involved in any Liberty or Liberty related cases. Fortunately, there is plenty of other work to do in the firm, so that won't be a financial problem whatsoever.